



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK ZONING BOARD OF ADJUSTMENT

APPROVED MINUTES

WEDNESDAY, NOVEMBER 20, 2013

Members present: Fran L'Heureux, Patrick Dwyer, Phil Straight, Tony Pellegrino, Kevin Shea, and alternates Leonard Worster and Richard Conescu.

Member absent: Nathan Barry

Staff present: Planning and Zoning Administrator Nancy Larson, Assistant Planner Donna Pohli and Recording Secretary Zina Jordan.

1. Call to Order

Fran L'Heureux called the meeting to order at 7:00 p.m.

2. Roll Call

Patrick Dwyer led the Pledge of Allegiance. Kevin Shea read the preamble. Fran L'Heureux swore in members of the public who would be testifying.

- 3. Hartt's Home Improvements (petitioner) & Lee Henderson (owner)** – Variance from the definition of accessory use under Section 1.03(A)(3) of the Zoning Ordinance to permit a 24'x36' residential garage which has been determined to not be incidental and subordinate to the principal building (residential home). The parcel is located at 129 Daniel Webster Highway in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 2D, Lot 014. Case # 2013-33.

Thomas Hartt, Hartt's Home Improvements, read the points of law into the record.

There was no public comment.

The Board voted 5-0-0 to grant the variance, with the following conditions, on a motion made by Patrick Dwyer and seconded by Kevin Shea: that the garage be one story only and for residential use only.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because this is a private dwelling;
2. The spirit of the ordinance is observed because the building will be in compliance with the Ordinance. It will blend in with the existing neighbors and will improve the overall roadside view;
3. Granting this variance would do substantial justice because the garage will enhance the roadside look, making it cleaner and organized. The trailer container and worn-out shed will be gone;

4. The values of the surrounding properties would not be diminished because the garage addition will increase the homeowner's property and provide features that are common in neighboring houses. Many abutting homes have been renovated. Renovations to this 1890s home will contribute to enhancing the neighborhood;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the owner is trying to clean up the roadside view. The lot meets all setback and dimensional requirements for housing items. The placement will afford the owner easy access;
 - 2) The proposed use is a reasonable one because the garage addition, detached garage, and storage of belongings and vehicles require dimensions of 24' x 36'. The roadside view will be cleaned up and organized to store items appropriately.

4. Gate City Collision Centers (petitioner) & T.C.P.I. Ventures, LLC. – Variance under Section 2.02.3 (B) to permit an auto-body repair business in the C-2 (General Commercial) & under Section 2.02.11(D)(1) to permit an auto-body repair business in the Aquifer Conservation District. The parcel is located at 293 Daniel Webster Highway. Tax Map 4D-4, Lot 066. Case # 2013-34.

Michael O'Donnell, Senior Engineer/Project Manager, DuBois & King, Inc., said the auto body shop would be on the front parcel on D.W. Highway. The site was formerly occupied by an automobile dealership and included an automobile service use. The applicant will re-occupy the existing building. Its footprint, exterior parking areas and site features will remain as approved by the Planning Board on November 12, 2013. The applicant will relocate its operations from its present location at 422 D.W. Highway, which is also within the C-2 District, because the existing building can be operated more efficiently as an auto body repair facility.

Michael O'Donnell read the points of law to permit the repair business in the C-2 General Commercial District into the record.

Tony Pellegrino asked whether he had appeared before the Merrimack Conservation Commission (MCC). Michael O'Donnell said the MCC recommended using sand rather than salt or chemicals for de-icing, defining snow storage on the plan, and acquiring Green SnoPro certification.

There was no public comment.

The Board voted 5-0-0 to grant the variance to permit an auto-body repair business in the C-2 (General Commercial) District, on a motion made by Kevin Shea and seconded by Patrick Dwyer.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the use of providing service to repair vehicles of regional and local customers is consistent with the purpose of the District. It will not alter the character of the area. Auto body repair and painting is a use similar to mechanical repairs and service for which the existing building was previously used. There are numerous other automotive uses in this area. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district. Hazardous waste and materials will be handled and contained according to state and federal regulation. There will be no salvage or junk

vehicles stored at the site. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. The primary materials used are paint and paint thinner. Paint thinner is recycled and does not leave the site; excess paint is dried into a plastic mass about the size of a hockey puck and containerized as a hazardous waste. Hazardous waste materials are picked up by a licensed hazardous materials contractor and disposed off-site;

2. The spirit of the ordinance is observed because the character of the area will not be altered; there are numerous other automotive uses in this area. This proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district;
3. Granting this variance would do substantial justice because it would allow the existing building and site to be re-occupied with a use similar to that for which it was constructed. The use is consistent with the previous use and consistent with other automotive uses in the C-2 District. This proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district;
4. The values of the surrounding properties would not be diminished because the use is consistent with the previous use. There is no correlation between the specific components of vehicles being serviced and the values of adjacent properties. No salvage or junk vehicles will be stored at the site. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. Paint thinner is recycled and does not leave the site; excess paint is dried into a plastic mass about the size of a hockey puck and containerized as a hazardous waste. Hazardous waste materials are picked up by a licensed hazardous materials contractor and disposed off-site. The building will be similar in appearance as today. The most notable difference will be the addition of overhead doors. The site and building exterior will be maintained in good condition;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the special condition that distinguishes the property from others in the area is that it was developed for a similar automotive use. The building is presently configured with a number of overhead doors, providing access to the automotive service area. The building and site would be re-occupied with a use similar to that for which they were constructed;
 - 2) The proposed use is a reasonable one because the proposed is similar to the previous one. There are numerous other automotive uses in the area. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district.

Michael O'Donnell read the points of law to permit the repair business in the Aquifer Conservation District into the record.

5A: Tony Pellegrino asked whether there would be engine work. Michael O'Donnell said there would be, but not many chemicals or varieties of chemicals would be used. Unlike a mechanic, only a few would be stocked on location. Fran L'Heureux asked about engine parts. Michael O'Donnell said the business repairs all car components, but its focus is on appearance and painting. A vehicle needing extensive repairs is sent out.

5B: Patrick Dwyer noted that the area is more residential and asked about air quality, fumes and noise. Michael O'Donnell said the business operates during daytime hours only. There are fumes from spray when painting. There will be two enclosed booths, air cleaners, ventilation, and odor control as required by law and the Fire Code.

Chase Piekarski, Gate City Collision Centers, said the booths are EPA-certified. There will be a large filtration system. Everything is enclosed and adjacent to the airtight booths. Motors cannot be heard outside. Pollutant standards prohibit smells outside the building. Michael O'Donnell stated that the business had no issues at its present location since it began in 1997. Chase Piekarski said noise would be no different from normal traffic when cars are moved.

Public comment

Lawrence Fortin, 4 Caron Street, works in a garage that is noisy but it's not bad. There is a garage and auto body shop on Herrick Street. It is a quiet neighborhood. He agreed that road traffic makes more noise and cancels out the garage noise. He asked about hours of operation, which Chase Piekarski said are 8:00 a.m.-5:00 p.m., Monday-Friday. The business is closed on weekends. Lawrence Fortin favors the variance.

Phil Straight said proper use, not noise from large lumber and pickup trucks, is the Zoning Board's (ZBA) issue. Kevin Shea said it already operates the same exact business in the exact district.

The Board voted 5-0-0 to grant the variance to permit an auto-body repair business in the Aquifer Conservation District, on a motion made by Kevin Shea and seconded by Tony Pellegrino.

Findings of Fact

- 1) The granting of the variance would not be contrary to the public interest because the building is on public water service and there are no operations associated with the use that will draw water from the aquifer or release contaminants to the aquifer, soil or surface water. The use will not alter the character of the area; the proposed use is similar to the previous one. There are numerous other automotive uses in this area. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district. Vehicles will be repaired inside the building, hazardous chemicals and materials will be handled and contained in accordance with state and federal regulations, and there will be no salvage or junk vehicles stored at the site. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. The primary materials used are paint and paint thinner. Paint thinner is recycled and does not leave the site. Excess paint is dried into a plastic mass about the size of a hockey puck and containerized as hazardous waste. Hazardous waste materials are picked up by a licensed hazardous materials contractor and disposed off-site;
- 2) The spirit of the ordinance is observed because the building is on public water service and no operations will draw water from or release contaminants into the aquifer. There are numerous other automotive uses in the District. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district.
- 3) Granting this variance would do substantial justice because it would allow the existing building and site to be re-occupied with a use similar to that for which it was constructed. The auto body repair use is consistent with the previous use. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. The use is consistent with other automotive uses in

the District. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district.

- 4) The values of the surrounding properties would not be diminished because the repair use is consistent with the previous one. There is no correlation between the specific components of vehicles being serviced and the values of adjacent properties or between the specific components of vehicles being serviced and the amount and quality of groundwater in an aquifer. No salvage or junk vehicles will be stored at the site. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. The primary materials used are paint and paint thinner. Paint thinner is recycled and does not leave the site. Excess paint is dried into a plastic mass about the size of a hockey puck and containerized as hazardous waste. Hazardous waste materials are picked up by a licensed hazardous materials contractor and disposed off-site. The building's appearance will be the same as today, with the most notable difference being the addition of overhead doors. The site and building exterior will be maintained in good condition;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the building is on public water service and there are no operations associated with the use that will draw water from the aquifer or release contaminants to the aquifer, soil or surface water. The special condition of the property that distinguishes it from others in the area is that it was developed for a similar automotive use. The building is presently configured with a number of overhead doors, providing access to the automotive service area.
 - 2) The proposed use is a reasonable one because the use is similar to the previous one. There are numerous other automotive uses in this area. The proposal is to relocate a business that presently exists in the C-2 District to a different location in the same district. No salvage or junk vehicles will be stored at this site. Auto body repair utilizes lesser quantities of hazardous materials and fewer varieties of automotive chemicals than a typical motor vehicle service facility. The primary materials used are paint and paint thinner. Paint thinner is recycled and does not leave the site. Excess paint is dried into a plastic mass about the size of a hockey puck and containerized as hazardous waste. Hazardous waste materials are picked up by a licensed hazardous materials contractor and disposed off-site.

5. Gate City Collision Centers (petitioner) & T.C.P.I. Ventures, LLC. – Variance under Section 2.02.4(B) to permit vehicle storage in the I-1 (Industrial) & under Section 2.02.11(D)(1) to permit vehicle storage in the Aquifer Conservation District. The parcel is located at 6 & 6A Caron Street. Tax Map 3D-2, Lot 046. Case # 2013-35.

Michael O'Donnell, Senior Engineer/Project Manager, DuBois & King, Inc., said the site was formerly used as a vehicle storage facility. In 2002 the Planning Board approved an expansion of the facility, including additional parking and some small buildings for preparation of the stored vehicles. The expansion was partially constructed. The vehicle storage use will operate separately from the proposed auto body repair facility on an adjacent parcel. Vehicles would be stored on the vacant lot with asphalt paving. The proposal was updated to install a buffer along the Fortin property before the parking lot is expanded. Some parking spaces will be leased to an auto dealership with overflow inventory. If long-term storage or overflow employee parking is

needed, there will be access to that lot. The tenant, who has not yet been determined, will store some new cars. Leasing parking spaces to a tenant is a separate business.

Michael O'Donnell read the points of law to permit vehicle storage in the I-1 Industrial District into the record.

#1: Patrick Dwyer asked whether new cars would be delivered by truck. The road is narrow. Michael O'Donnell said cars would not be unloaded in the street. Trucks will pull in through the secured gate, unload and turn on the lot before leaving. They will go east on Herrick Street. A tractor-trailer is 8' wide. The road can be utilized by a fire truck or a car carrier. The former Saab dealership stored vehicles and tractor-trailers were able to use the lot. On November 12, 2013, the Planning Board stipulated that there be no loading or unloading of trucks in the street. Two vehicles can pass each other on the 22'-wide pavement.

Tony Pellegrino asked about noise and delivery hours. Chase Piekarski, Gate City Collision, said he could stipulate that deliveries must be during normal business hours.

Fran L'Heureux asked when damaged vehicles would be towed in and whether the applicant has his own wrecker service. Chase Piekarski said he does not. Most vehicles arrive during the day. Fran L'Heureux asked whether people leave junk vehicles from accidents. Chase Piekarski said that is incredibly rare. He charges a fee to prevent it. Space is finite and he wants to move vehicles in and out quickly. He would remove totaled vehicles. Kevin Shea stated that such questions do not pertain to the industrial use. Traffic is not relevant. Patrick Dwyer said the public interest issue is safety. He asked about installing lights, which Fran L'Heureux said is a Planning Board issue. Kevin Shea said this is the least intrusive use in the industrial district.

There was no public comment.

The Board voted 5-0-0 to permit vehicle storage in the I-1 (Industrial) District, on a motion made by Kevin Shea and seconded by Tony Pellegrino.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because a vehicle storage facility is similar to the allowed uses and would permit the applicant to re-establish the specific use for which the improvements on the parcel were designed and constructed. The use will not alter the character of the area. The existing fenced area was previously used as a vehicle storage facility for the Saab dealership. Approval will allow a vacant facility to be re-occupied. Vehicles will be stored within a secure fenced area. No salvage or junk vehicles will be stored at the site;
2. The spirit of the ordinance is observed because a vehicle storage facility is similar to the allowed uses and would allow the applicant to re-establish the specific use for which the improvements on the parcel were constructed. The character of the area will not be altered, since there are numerous other automotive uses in the area;
3. Granting this variance would do substantial justice because it would allow the existing vehicle storage facility to be re-occupied with the use for which it was constructed. The use is consistent with other automotive uses in the area;
4. The values of the surrounding properties would not be diminished because the facility is consistent with the previous use and approved site plan. The facility already exists and was previously operated. No junk or salvage vehicles will be stored.
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because a vehicle storage facility is similar to the allowed uses and would permit the applicant to re-establish the specific use for which the improvements on the parcel were designed and constructed. The special condition of the property that distinguishes it from other properties in the area is that it was developed for the same use that the applicant is seeking to re-establish.
- 2) The proposed use is a reasonable one because the existing facility was previously approved and used for vehicle storage. The applicant proposes to re-establish the former use according to the approved site plan.

Michael O'Donnell read the points of law to permit vehicles storage in the Aquifer Conservation District into the record.

#1: Richard Conescu asked if the facility would use public water or draw it from the aquifer. Michael O'Donnell repeated that public water would be used. Richard Conescu asked about fluids dripping from cars dropped off at night. Michael O'Donnell said fluids spill at the scene of the accident and are cleaned up by the Fire Department. Nancy Larson added that public water goes down both Caron and Herrick Streets.

#2. Richard Conescu concluded that there are no operations associated with the use that will draw water from the aquifer.

There was no public comment.

The Board voted 5-0-0 to permit vehicle storage in the Aquifer Conservation District, on a motion made by Kevin Shea and seconded by Patrick Dwyer.

Findings of Fact

1. The granting of the variance would not be contrary to the public interest because the buildings are proposed to connect to public water service and there are no operations associated with the use that will draw water from the aquifer or release contaminants to the aquifer, soil or surface water. The use will not alter the character of the area because the existing fenced area was previously used as a vehicle storage facility. Approval will allow the vacant facility to be re-occupied. Vehicles will be stored within a secure fenced area. No salvage or junk vehicles will be stored at the site. The vehicles stored on the parcel will be roadworthy vehicles, except for some stored for repair or limited use;
2. The spirit of the ordinance is observed because the buildings are proposed to connect to public water service and there are no operations associated with the use that will draw water from the aquifer or release contaminants to the aquifer, soil or surface water. The character of the area will not be altered because there are numerous other automotive uses in the area;
3. Granting this variance would do substantial justice because it would allow the existing vehicle storage facility to be re-occupied by the use for which it was constructed. The use is similar to other automotive uses in the area;
4. The values of the surrounding properties would not be diminished because the vehicle storage facility is consistent with the previous use and approved site plan. No junk or salvage vehicles will be stored at the site;
5. A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- 1) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the buildings are proposed to connect to public water service. No operations associated with the use will draw water from the aquifer or release contaminants to the aquifer, soil or surface water;
- 2) The proposed use is a reasonable one because the existing facility was previously approved and used for vehicle storage space. The former use will be re-established according to the approved site plan. No salvage or junk vehicles will be stored at the site.

6. Discussion/possible action regarding other items of concern

None.

7. Approval of Minutes – October 23, 2013

The minutes of October 23, 2013, were approved as submitted, on a motion made by Patrick Dwyer and seconded by Tony Pellegrino.

8. Adjourn

The meeting adjourned at 8:30 p.m., by a vote of 5-0-0, on a motion made by Tony Pellegrino and seconded by Patrick Dwyer.